

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-924

May 8, 2001

TOUCH AMERICA, INC.  
Petition for Finding of Public  
Convenience and Necessity to  
Provide Service as an  
Interexchange Telephone  
Utility

ORDER GRANTING AUTHORITY  
TO PROVIDE INTEREXCHANGE  
SERVICE AND APPROVING  
SCHEDULE OF RATES AND  
TERMS AND CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants Touch America, Inc. (Touch America, Inc. or Company) the authority to provide facilities-based interexchange service throughout the State of Maine and approves the Company's Terms and Conditions and Rate Schedules. Pursuant to Chapter 280, §§ 11 and 12, we exempt Touch America, Inc. from the requirements of Chapter 210, *Uniform System of Accounts*, and 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On November 8, 2000, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Touch America, Inc. applied for authority to provide facilities-based interexchange service in Maine. Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements

necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Touch America, Inc. the authority to provide facilities-based interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

Touch America, Inc.'s application provides reasonable information indicating that its financial and management capabilities are adequate to provide facilities-based interexchange services in Maine.

## **II. SERVICE TERRITORY**

Touch America, Inc. has requested authority to provide facilities-based interexchange service throughout the state. We grant that authority.

## **III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the revised terms and conditions proposed by Touch America, Inc. and received by the Commission on April 3, 2001 to go into effect. Touch America, Inc. has substantially used the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's petition, Terms and Conditions, and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in Touch America, Inc.'s terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions is a provision stating that in the event of such a conflict, the statute or the Commission's Rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Touch America, Inc.'s services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by Touch America, Inc. to go into effect.

## **IV. PAYMENT OF ACCESS CHARGES**

The Commission has granted authority to Touch America, Inc. to provide

facilities-based interexchange service.<sup>1</sup> Our approval of Touch America, Inc.'s application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules. Because Touch America, Inc. provides facilities-based interexchange service, it must pay access charges directly to local exchange carriers.

## **V. WAIVERS; REPORTING REQUIREMENTS**

Pursuant to sections 11(A) and 12(A) of Chapter 280, Touch America, Inc. is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which governs approvals for reorganizations and contracts with affiliated interests. Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, Touch America, Inc. is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Because Touch America, Inc.'s rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, as required by Chapter 280, § 11(A), Touch America, Inc. must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, its annual intrastate minutes of use for the purpose of determining its regulatory assessment, and such other information requested by the Commission.<sup>2</sup> If Touch America, Inc. resells service to other facilities-based or switchless telephone service providers, the Company must maintain its records in a way that it is able to separately identify those sales. Pursuant to Chapter 280, § 11(B),

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

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<sup>1</sup>We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a facilities-based interexchange carrier. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, § 12(B) and (C) and in the ordering paragraphs below.

Touch America, Inc. shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

## **VI. OTHER REQUIREMENTS**

Touch America, Inc. shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in Ordering Paragraph 7.

## **VII. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Touch America, Inc. to provide facilities-based interexchange service throughout the State of Maine;
2. Approve Touch America, Inc.'s proposed Terms and Conditions and Rate Schedules (pages 1-165); those Schedules shall be effective on May 8, 2001;
3. Order that Touch America, Inc. shall pay interexchange access charges as required and pursuant to approved access rate schedules filed by local exchange carriers;
4. Direct that Touch America, Inc. shall notify each local exchange carrier in whose service area it intends to originate or terminate calls the date on which it will commence service if it will be providing facilities-based interexchange service, as defined in this Order;
5. Exempt Touch America, Inc. from the requirements of Chapter 210 of the Commission's Rules, except that it must report certain revenue and minutes of use information, as required by Chapter 280, § 11(A), on or before April 1 of each year;
6. Exempt Touch America, Inc. from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of or of any entity that owns more than 50% of. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), Touch America, Inc. shall also provide notice of any other changes in the name under

which it does business (d/b/a), any change of the location of its business office, and change of its contact person. Touch America, Inc. shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Touch America, Inc. shall amend its rate schedules and terms and conditions to reflect any change in identity; and

7. Direct that Touch America, Inc. shall comply with all applicable rules of the Commission, including the requirement in Chapter 280, § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20%.

Dated at Augusta, Maine this 8<sup>th</sup> day of May, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:

Welch  
Nugent  
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.